



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MTI/170788

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2015, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 23, 2016, at Neenah, Wisconsin.

The hearing was previously scheduled for January 6, 2016. The petitioner requested to reschedule the hearing. The hearing was rescheduled to February 2, 2016. At the February 2, 2016 date the petitioner provided documentation regarding identity theft. The hearing was started, but adjourned to allow the petitioner additional time to work with the agency, and potentially resolve the case. The parties never resolved the case, and the hearing continued and concluded on February 23, 2016.

The issue for determination is whether the petitioner's appeal of a 2012 tax intercept notice is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) was a resident of Milwaukee County in 2011 and 2012. She now lives in Winnebago County.
2. In January 2012 the agency sent the petitioner a notice of medical overpayment stating that she was overpaid \$2,343.29 in medical assistance benefits for the period of January 1, 2011 to December 31, 2011.
3. On March 2, 2012, April 3, 2012, and May 2, 2012 the agency sent the petitioner dunning notices reminding her that she still owed \$2,343.49 in a medical overpayment. This overpayment was under two claim numbers, [REDACTED] and [REDACTED], with a total amount due of \$2,343.49.
4. On November 16, 2012 the agency sent the petitioner a notice stating that they were intercepting her taxes for unpaid medical overpayments under claim numbers [REDACTED] and [REDACTED], with a total amount due of \$2,343.49.
5. On December 16, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FoodShare, and MA payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

However, an interception hearing on the merits is only available if the petitioner files the hearing request within 30 days of receiving the interception notice:

(3) NOTICE REQUIREMENTS.(a)

2. Inform the person that he or she may appeal the determination of the department of health services to certify the amount by requesting hearing under sub.(4) within 30 days after the date of the letter and inform the person of the manner in which he or she may request a hearing.

Wis. Stat. §49.85(3)(a)2.

The petitioner should have appealed the interception action within 30 days of the November 2012 interception notice. The petitioner argued that she did not get the proper notices. I do not find this testimony credible. Initially, the agency stated the incorrect address. The petitioner corrected the agency's error. The agency then turned to the exhibits, and realized that they had misspoken, and that the notices were sent to the correct address that the petitioner had just stated. The petitioner then argued that she had moved from that address prior to when the notices were sent. She has not provided

documentation of when she moved. All of this testimony is convenient and self-serving for this petitioner.

I further note that the petitioner admitted that she knew about the overpayment and tax intercept as far back as six or seven months ago. Despite knowing about the overpayment, the petitioner never requested a hearing. For all these reasons, I must conclude that her appeal is untimely, and I am without jurisdiction to reach the merits of whether the agency properly implemented a tax intercept.

Ultimately, the petitioner sought to challenge the underlying overpayment. Even if her appeal of the tax intercept were timely, her appeal of the overpayment would still be untimely. The Department is required to recover all overpayments of public assistance benefits. MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. The right of recovery is against any MA "recipient to whom or on whose behalf the incorrect payment was made." Wis. Stat., §49.497(1)(b).

In this case the petitioner argued that she was a victim of identity theft, and that she is not responsible for the overpayment. Rather, another person used her name to obtain these benefits. The overpayment notice was from 2012. The petitioner did not appeal until the end of 2015. Thus, I am without jurisdiction to decide this case on the merits.

I note that if I had jurisdiction, I would decide in the agency's favor. Although I believe that the petitioner was a victim of identity theft at some point, I also believe that the petitioner was the person responsible for this overpayment. It makes absolutely no sense for a person to take medical assistance benefits out in another person's name. This person would then have had to use the petitioner and her children's names when seeking medical care from medical professionals. The petitioner was not credible in many other respects during the hearing. Regardless, I do not have jurisdiction to decide this issue.

CONCLUSIONS OF LAW

The petitioner's appeal of a 2012 tax intercept notice is timely, and I am without jurisdiction to address whether the agency properly implemented the tax intercept.

THEREFORE, it is

ORDERED

That the petitioner is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of March, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 7, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability